

JEFFREY H. WOOD, Acting Assistant Attorney General
SETH M. BARSKY, Section Chief
COBY HOWELL, Senior Trial Attorney
Wildlife & Marine Resources Section
Environment & Natural Resources Division
U.S. Department of Justice
c/o U.S. Attorney's Office
1000 SW Third Avenue
Portland, OR 97204-2902
(503) 727-1000 (Tel.); (503) 727-1117 (Fax)
Email: Coby.Howell@usdoj.gov

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

STATE OF OREGON, et al.,

Defendants.

Case No.: 3:68-CV-0513-MO

**ALL PARTIES' JOINT MOTION
AND STIPULATED ORDER
APPROVING 2018-2027 UNITED
STATES v. OREGON
MANAGEMENT AGREEMENT**

All parties to this case, listed below, are pleased to move this Court for an order approving the 2018-2027 *United States v. Oregon* Management Agreement, attached hereto as Exhibit 1:

- The United States of America, which initiated this lawsuit against the State of Oregon in a Complaint filed on September 13, 1968;
- The Confederated Tribes of the Warm Springs Reservation of Oregon, which was granted intervention as a plaintiff on December 13, 1968;

- The Confederated Tribes of the Umatilla Indian Reservation, which was granted intervention as a plaintiff on December 18, 1968;
- The Nez Perce Tribe, which was granted intervention as a plaintiff on January 8, 1969;
- The Yakama Nation, which was granted intervention as a plaintiff on December 5, 1968;
- The State of Washington, which was granted intervention as a defendant orally on April 29, 1974, and by written order on May 20, 1974;
- The State of Oregon, defendant;
- The State of Idaho, which was granted intervention on May 20, 1985 (Doc. No. 1281); and
- The Shoshone-Bannock Tribes, which were granted intervention orally on July 25, 1986 (Doc. No. 1380), and whose intervenor status the Court reaffirmed on December 5, 2002 (Doc. No. 2322).

BACKGROUND

The United States filed this case in 1968 to seek relief concerning the “right of taking fish at all usual and accustomed places, in common with citizens of the Territory,”¹ that is secured to the Warm Springs, Umatilla, Nez Perce, and Yakama Tribes in treaties that the United States executed with those Tribes in 1855. On July 8, 1969, this Court issued a memorandum opinion declaring the rights of the parties. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969).² On

¹ The Warm Springs Tribe has similar language in its treaty: “Provided, also, That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians; and at all other usual and accustomed stations, *in common with citizens, of the United States*, and of erecting suitable houses for curing the same”

² *Sohappy v. Smith*, Civil No. 68-409, was a companion case to *United States v. Oregon*. The two were consolidated on November 18, 1968. The Court terminated continuing jurisdiction over *Sohappy v. Smith* on June 27, 1978. Since then, all pleadings have borne the caption *United States v. Oregon*.

October 10, 1969, the Court entered a Judgment in accordance with that opinion. On May 10, 1974, the Court issued an Order Amending Judgment, which was affirmed by the Ninth Circuit. *Sohappy v. Smith*, 529 F.2d 570 (9th Cir. 1976).

To this day, the Court has retained continuing jurisdiction to implement the 1969 Judgment. 302 F. Supp. at 911; Judgment, 4. The Court has encouraged the parties to work out for themselves the details of how its Judgment should be implemented. *E.g.*, 302 F. Supp. at 912. On February 28, 1977, the Court approved a five-year Plan for Managing Fisheries on Stocks Originating From the Columbia River and its Tributaries Above Bonneville Dam. On October 7, 1988, the Court approved a ten-year Columbia River Fish Management Plan (1988 CRFMP) (Doc. No. 1594). *United States v. Oregon*, 699 F. Supp. 1456 (D. Or. 1988), *aff'd*, 913 F.2d 576 (9th Cir. 1990). In May 2005 the Court approved an interim agreement of shorter duration. (Doc. No. 2407). On August 12, 2008, the Court also approved the 2008-2017 Management Agreement (Doc. No. 2546).

In 2015, as the expiration of the 2008-2017 Management Agreement neared, the parties began an effort to negotiate a new or renewed long-term agreement utilizing the assistance of The Honorable Edward J. Leavy of the Ninth Circuit Court of Appeals as mediator. The 2018-2027 *United States v. Oregon* Management Agreement is the result of more than three years of negotiation.

In June 2017, the parties' Technical Advisory Committee completed a biological assessment on the proposal described in the 2018-2027 *United States v. Oregon* Management Agreement under 16 U.S.C. § 1536(c), and submitted it to the National Marine Fisheries Service (NOAA Fisheries) and U.S. Fish and Wildlife Service. On February 23, 2018, NOAA Fisheries and the U.S. Fish and Wildlife Service issued biological opinions on the proposed agreement under 16 U.S.C. § 1536(b). In those biological opinions, NOAA Fisheries and the U.S. Fish and Wildlife Service determined that the proposed agreement would not cause jeopardy to any listed species. The agencies have also completed an Environmental Impact Statement in accordance with the National Environmental Policy Act.

The parties are pleased to present the 2018-2027 *United States v. Oregon* Management Agreement for approval and adoption as an order of the Court.³

STIPULATION

All parties stipulate that the 2018-2027 *United States v. Oregon* Management Agreement should be approved and adopted as an Order of the Court.

RESPECTFULLY SUBMITTED this 26th day of February, 2018.

JEFFREY H. WOOD
Acting Assistant Attorney General
SETH M. BARSKY, Section Chief

/s/ Coby Howell
COBY HOWELL, Senior Trial Attorney
Wildlife & Marine Resources Section
Environment & Natural Resources Division
U.S. Department of Justice
c/o U.S. Attorney's Office
1000 SW Third Avenue
Portland, OR 97204-2902
(503) 727-1000 (Tel.); (503) 727-1117 (Fax)
Email: Coby.Howell@usdoj.gov

By permission:

/s/ Brent H. Hall
BRENT H. HALL, Oregon State Bar #992762
Tribal Attorney
Confederated Tribes of the Umatilla Indian
Reservation
46411 Timine Way
Pendleton, OR 97801
(541) 429-7407
Attorney for the Confederated Tribes of the Umatilla
Indian Reservation

/s/ John W. Ogan
JOHN W. OGAN, Oregon State Bar #065940
Law Office of John W. Ogan
P.O. Box 1192

³ The parties would like to recognize the substantial contributions of Laurie Jordan, Policy Analyst II, Columbia River Intertribal Fish Commission. Ms. Jordan kept the parties organized and focused, and provided intellectual and material assistance in many ways over a long time.

Sisters, OR 97759
(541) 410-4766
Attorney for the Confederated Tribes of the Warm
Springs Reservation of Oregon

/s/ David J. Cummings
DAVID J. CUMMINGS, Oregon State Bar #922695
Office of Legal Counsel
Nez Perce Tribal Executive Committee
P.O. Box 305
Lapwai, ID 83540
(208) 843-7355
Attorney for the Nez Perce Tribe

/s/ Thomas Zeilman
THOMAS ZEILMAN, Washington State Bar
#28470
Law Offices of Thomas Zeilman
32 N. Third St., Suite 310
P.O. Box 34
Yakima, WA 98907
(509) 575-1500
Attorney for the Yakama Nation

/s/ Michael Grossmann
MICHAEL S. GROSSMANN
Assistant Attorney General
Washington Attorney General's Office
P.O. Box 40100
Olympia, WA 98504-0100
(360) 586-2872
Of Attorneys for the State of Washington

/s/ Anika Marriott
ANIKA E. MARRIOTT OSB# 104634
Assistant Attorney General
Oregon Department of Justice
1162 Court St. NE
Salem, OR 97310
Telephone: 503-947-4520
anika.e.marriott@doj.state.or.us
Of Attorneys for the State of Oregon

/s/ Kathleen Trever
KATHLEEN TREVER, Deputy Attorney General
Idaho Attorney General's Office
Natural Resources Division
P.O. Box 83720
Boise, ID 83720-0010
Of Attorneys for the State of Idaho

/s/ Bill Bacon
WILLIAM BACON (ISB No. 2766)
Office of the Reservation Attorney

Shoshone-Bannock Tribes
General Counsel
Fort Hall, Idaho 83203
Telephone: (208) 478-3815
Fax: (208) 239-9276
bbacon@sbtribes.com

ORDER

1. The Court has examined the 2018-2027 *United States v. Oregon* Management Agreement in light of the Court's Judgment of October 10, 1969, as amended May 10, 1974, and other materials in the case files. The Court concludes that the 2018-2027 *United States v. Oregon* Management Agreement is fundamentally fair, adequate, and reasonable, both procedurally and substantively, in the public interest, and consistent with applicable law, and that it has been negotiated by the parties in good faith. *See Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501 (1986); *United States v. Oregon*, 913 F.2d 576, 580-81 (9th Cir. 1990).

2. The parties' joint motion to approve the 2018-2027 *United States v. Oregon* Management Agreement is GRANTED. The 2018-2027 *United States v. Oregon* Management Agreement is hereby approved and adopted as an Order of the Court.

3. This Court retains jurisdiction to resolve disputes concerning the 2018-2027 *United States v. Oregon* Management Agreement as described therein.

IT IS SO ORDERED.

Dated this _____ day of _____, 2018.

HON. MICHAEL W. MOSMAN
CHIEF UNITED STATES DISTRICT
JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was today served via the Court's CM/ECF system on all counsel of record.

/s/ Coby Howell
COBY HOWELL